IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

MINNIE REESE RICHARDSON WRAGG, *Petitioner,*

v.

FEDERAL LAND BANK OF NEW ORLEANS, *ET AL.*

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE FIFTH CIRCUIT

BRIEF IN SUPPORT OF PETITION

OPINIONS

The opinion of the Circuit Court of Appeals for the Fifth Circuit written by Judge Sibley was filed on November 7, 1944. It is reported in F. (2d).

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U. S. C. A., Title 28, Section 347). The judgment of the Circuit Court of Appeals was entered November 7, 1944. Petition for rehearing was denied December 11, 1944. This petition was filed .

STATEMENT OF THE CASE

The facts are stated in the petition. After the decision of this Court reversing and remanding the cause to the District Court for administration of her property in accordance with the terms of Section 75 of the Bankruptcy Act, the District Court again refused to place petitioner in possession and ad-

minister the property in accordance with the terms of Section 75(s). On appeal the Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the court below holding in effect that the question of the right of possession had to be determined by the State law and not by the provisions of Section 75(s) of the Bankruptcy Act. The decision also had the effect of denying to the farm debtor-bankrupt rents and profits and timber during the period that her rights were denied by the erroneous decision of the District Court in 1940, and also denying to her the benefit of the increase in value of the property during that period.

ARGUMENT

On January 4, 1943, this Court reversed this cause so that petitioner's interest in the mortgaged property, her right of redemption, should be administered in accordance with Section 75 of the Bankruptcy Act. It was the opinion of the District Court and the Circuit Court of Appeals that, since this right of redemption did not carry with it a right to possession, the Bankruptcy Court could give her none. In this decision we submit that the Circuit Court of Appeals construed the Bankruptcy Act in a manner in conflict with the decisions of this Court in the case of *Wragg v. Federal Land Bank*, 317 U. S. 325, and *Mangus v. Miller*, 317 U. S. 178. In the *Wragg Case* this Court held that it was for the Bankruptcy Court to determine, by reference to the provisions of the Bankruptcy statute, what rights created by state law—regardless of the characterization which might be applied to them by state statutes and decisions —are within the jurisdiction of the Bankruptcy Court. The argument was made before this Court on that appeal that, since the right of redemption existing under Alabama law was a mere personal privilege, and not a proper right, that they were not within the jurisdiction of the Bankruptcy Court. That argument this Court refused to follow.

The Circuit Court of Appeals in its opinion holds that, since Mrs. Wragg had only a personal privilege of redemption, the

property could not be administered by putting her into possession in accordance with Section 75 of the Bankruptcy Act. This Court, in the case of *Mangus v. Miller*, 317 U. S. 178, 186, holds:

> "But in the event that no composition is effected the debtor may ask to be adjudicated a bankrupt and as such to be placed in possession of the property under the provisions of Section 75 (s) upon terms which will enable him, by paying a suitable rental, to redeem the property unless he is sooner able to finance himself."

The fundamental question is whether once the jurisdiction of the Bankruptcy Court attaches, the property shall be administered in accordance with the Bankruptcy Statute or in accordance with the provisions of the state law which would be applicable were it not for the Bankruptcy Act. The Circuit Court of Appeals makes the right of a farm debtor-bankrupt to have property administered, depend upon the extent of that right under state law. According to the opinion of the Circuit Court of Appeals for the Fifth Circuit, unless the farm debtor-bankrupt has the right of possession under state law, the property cannot be administered under Section 75 (s) of the Bankruptcy Act; that is, by placing the bankrupt in possession upon terms which will enable him by paying a suitable rental, to redeem the property. In so holding we submit that the Circuit Court of Appeals overlooked entirely the purposes of the act which were, as so many times construed by this Court, to permit the rehabilitation of the farmer by placing him in possession of the property upon terms which will enable him, by paying a suitable rent, to redeem the property and rehabilitate himself.

In Alabama, a mortgage on land passes legal title thereto with the right in the mortgagee to immediate possession unless postponed by the terms of the mortgage, and in any event all right to possession by the mortgagor ceases on passage of the law day and default in payment of the debt. *Wilson v. Federal Land Bank of New Orleans*, 230 Ala. 75, 159 So. 493. If the decision of the Circuit Court of Appeals is correct, therefore,

the Farm Bankruptcy Act has no room for operation in the State of Alabama. As was pointed out by this Court in *State Bank of Hardinsburg v. Brown*, 317 U. S. 135, 87 L. ed. 140, the Committee Reports in the House and Senate with respect to the proposed amendment to the Farm Bankruptcy Act evince a purpose to amend the existing law so as to render it clear that, whatever the right of redemption under state law, the bankrupt and his estate were to have the benefit of that right. Clearly it was the purpose of Congress to establish a system of bankruptcy applicable to farmers, which would be uniform throughout the United States, and not to pass an act where administration of the farmer's property by the Bankruptcy Court would depend upon differences in state law as to when the mortgagor's right to possession ceased. It is sophism to say, as did the Circuit Court of Appeals, that the farm debtor can be rehabilitated by selling a right to redeem property at its full appraised value. It was the intention of Congress that the farm debtor who had any right sufficient that if he had the money and were in position to pay, he could redeem and save the property, was entitled to the benefits of the Act. The Act provides a method of administration; that is, by the farmer's being placed in possession and paying rent. Courts which construe this to mean that the farm debtor is entitled to an administration only of the right of redemption, an incorporeal right of which clearly he cannot be placed in possession, overlook entirely the intent of Congress, continue to indulge in the narrow, formalistic interpretation of the Farm Debtor Act, which this Court has so often and roundly condemned.

The other aspect of the case is as to the extent of the rights of the farm debtor-bankrupt during the time that her benefits under the Act were erroneously denied by the District Court. Had it not been for the erroneous decree of the District Court, in 1940 she was entitled, by proceeding in accordance with Section 75, to rehabilitate herself either by remaining in possession of the property, or by redeeming as of the then appraised value. In either event she was entitled to rents and profits

after that date and to the timber which was on the property in 1940. She has been kept out of possession since 1940 through no fault of her own but in spite of all efforts to proceed in accordance with Section 75. We respectfully submit that the Bankrupt Court, as a court of equity, should not thus permit the party at whose instance the original erroneous decision was made, to retain all of the benefits arising out of that error and thus say to the petitioner:

> "A grave wrong was done to you, for which we were responsible, but the court should not remedy that wrong."

Respectfully submitted,

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